

~~PROPOSED~~ MICHIGAN STANDARDS FOR IMPOSING LAWYER SANCTIONS

Preface

These Michigan Standards for Imposing Lawyer Sanctions were adopted by the Michigan Supreme Court on [date], and are intended for use by the Attorney Discipline Board and its hearing panels in imposing discipline following a finding or acknowledgment of professional misconduct.¹ These standards may be amended or modified only by the Court.

Definitions: The definitions contained in the Commentary to Rule 1.0 of the Michigan Rules of Professional Conduct (MRPC) -and in Michigan Court Rule (MCR) 9.101 are incorporated by reference.²

“Negligence” is the failure of a lawyer to exercise the degree of care that a reasonable lawyer would exercise in the situation

~~“Intent” is the conscious objective or purpose to accomplish a particular result.~~

A. PURPOSE AND NATURE OF SANCTIONS

1.1 Purpose of Lawyer Discipline Proceedings: The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession.

1.2 Public Nature of Lawyer Discipline: Ultimate disposition of lawyer discipline should be public in cases of ~~disbarment~~revocation³, suspension, and reprimand. Only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should private discipline be imposed.

¹ The Court should say expressly whether these Standards are to be applied by Hearing Panels when considering a consent proposal for discipline under MCR 9.115(F)(5). The ADB and the AGC interpret the present wording differently. The word “acknowledgement”, as it is used in 1.0 and in Standard 3.0, supports the ADB’s interpretation that the Standards are to be used in considering whether to accept or reject a consent proposal. However, Standard 1.3’s statement that the Standards are intended to be used after a finding of misconduct under MCR 9.115(J)(1) supports the AGC’s argument that consents are not governed by the Standards. In a matter resolved by consent under MCR 9.115(F)(5) there is no finding of misconduct under MCR 9.115(J)(1). The Court should make its intention clear. Both the arguments in favor of and opposed to the Standards’ application in matters where the parties are seeking to resolve a matter by consent proposal under MCR 9.115(F)(5) have merit. A clear statement from the Court of its intention will aid the parties and the tribunals in properly employing the Standards.

² The only rule that contained a reference to “intent” has been eliminated.

³ “Revocation” is adopted as it is the term used in MCR 9.106 and throughout Chapter 9 of the Michigan Court Rules.

1.3 Purpose of These Standards: These standards are designed for use in imposing a sanction or sanctions following the entry of a finding of misconduct pursuant to MCR 9.115(J)(1).⁴ These Standards are designed to promote fairness, predictability, and continuity in the imposition of sanctions. They are also designed to provide a focus for appellate challenges concerning the appropriate level of discipline imposed upon a lawyer.

B. SANCTIONS AND OTHER CONSEQUENCES FOR MISCONDUCT

2.1 Scope: A disciplinary sanction is imposed on a lawyer upon a finding or acknowledgment that the lawyer has engaged in professional misconduct.

2.2 ~~Disbarment~~Revocation: ~~Disbarment~~Revocation means revocation of the license to practice law. An attorney whose license to practice law has been revoked may petition for reinstatement under MCR 9.124, but may not do so until at least 5 years have elapsed since revocation of the license. Eligibility for reinstatement is determined under MCR 9.123, which requires a disbarred attorney to establish by clear and convincing evidence the elements of MCR 9.123(B) and requires recertification by the Board of Law Examiners.

2.3 Suspension: Suspension is the removal of a lawyer from the practice of law for not less than 30 days. See MCR 9.106(2). An attorney suspended for 180 days or more is not eligible for reinstatement until the attorney has petitioned for reinstatement under MCR 9.124, has established by clear and convincing evidence the elements of MCR 9.123(B), and has complied with other applicable provisions of MCR 9.123.⁵

2.4 Interim Suspension: Interim suspension is the temporary suspension of a lawyer from the practice of law pending imposition of final discipline. Interim suspension includes:

- (a) automatic suspension upon conviction of a felony (MCR 9.120[B]) or,
- (b) suspension of a lawyer who fails to comply with the lawful order of a hearing panel, the Board, or the Supreme Court (MCR 9.127[A]).

⁴ See footnote 1 supra.

⁵ The current proposed Standard 2.3 offers no guide for predicting or reviewing a result in a case where the parties agree that some suspension is appropriate but cannot agree on whether reinstatement is appropriate. There is no rationale suggested within the current Standards as to how the parties or a hearing panel, or even the Board itself should distinguish between a suspension beginning at 30 days and a suspension for 180 days or more. The Court should adopt the ABA's treatment of the term "suspension" for purposes of these Standards. And it should adopt a version of Standard 2.3 that is consistent with the ABA's Standard 2.3. One such construction could be: Suspension, as that term is used in these Standards, means the loss of the privilege to practice law for a term of no less than 180 days and until the lawyer is reinstated under MCR 9.124.

2.5 Reprimand: Reprimand is a form of public discipline that declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.

~~**2.6 Admonition:** Admonition, also known as private reprimand, is a form of nonpublic discipline that declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.⁶ Reserved.~~

2.7 Probation: Probation is a sanction that may be imposed upon an impaired lawyer as set forth in MCR 9.121(C).

2.8 Other Sanctions and Remedies: Other sanctions and remedies that may be imposed include:

- (a) restitution;
- (b) transfer of an incompetent or incapacitated attorney to inactive status (MCR 9.121[A] and [B]); or
- (c) such conditions relevant to the established misconduct as a hearing panel, the Board, or the Supreme Court deems consistent with the purposes of lawyer sanctions.

2.9 Reciprocal Discipline: Reciprocal discipline is the imposition of a disciplinary sanction on a lawyer who has been disciplined in another jurisdiction. The only issues to be addressed in the Michigan proceeding are whether the respondent was afforded due process of law in the course of the original proceedings and whether imposition of identical discipline in Michigan would be clearly inappropriate. MCR 9.104(B).

C. FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS

3.0 Generally: In imposing a sanction after a finding or acknowledgment⁷ of lawyer misconduct, the Board and hearing panels should consider the following factors:

- (a) the nature of the misconduct;
- (b) the lawyer's mental state;
- (c) the circumstances of the misconduct, including the existence of aggravating or mitigating factors; and
- (d) the precedent of the Court and the Board.

3.1 Application of Standards: In considering the foregoing factors and applying these standards, hearing panels, the Board, and others should:

⁶ Since a Hearing Panel and the Attorney Discipline Board cannot issue an admonition, there is no valuable purpose in setting forth a definition. It will unfortunately only confuse parties and the tribunals with regard to the availability of an admonishment as an option.

⁷ See footnote 1 supra.

- (a) Consult Appendix 1 (Cross-Reference Table: Michigan Rules of Professional Conduct and Standards for Imposing Lawyer Sanctions) and locate the rule violated and a reference to the pertinent standard in Section D;
- (b) determine which of the factors present in the pertinent standard apply, and select the appropriate recommended sanction;
- (c) consider whether the recommendation adequately addresses the nature or effects of the misconduct, and articulate any basis for selecting an alternative sanction as a baseline;
- (d) if the Standards do not adequately address the nature or effects of the misconduct then it is appropriate to refer to ~~the commentary and~~ precedent to ~~refine the~~obtain a baseline recommendation⁸; and
- (e) consider aggravating and mitigating factors (see Section E).

D. RECOMMENDED SANCTIONS

The recommended sanctions in the following standards take into account the factors set forth in Standard 3.0 and are generally appropriate for the types of misconduct specified, absent aggravating or mitigating circumstances.

4.0 Violations of Duties Owed to Clients and Fiduciaries

4.1 Failure to Preserve Property held in Trust: The following sanctions are generally appropriate in cases involving the failure to preserve property held in trust in violation of MRPC 1.15:

4.11 ~~Disbarment~~Revocation is generally appropriate when a lawyer knowingly fails to preserve property held in trust.

⁸ The changes to this sub-paragraph are consistent with the Court's direction to Hearing Panel's and the ADB at Note 13 of *Grievance Administrator v Lopatin*, 462 Mich 235 (2000), which states:

... Where, for articulated reasons, the ADB or a hearing panel determines that the ABA standards do not adequately consider the effects of certain misconduct, do not accurately address the aggravating or mitigating circumstances of a particular case, or do not comport with the precedent of this Court or the ADB, it is incumbent on the ADB or the hearing panel to arrive at, and explain the basis for, a sanction or result that reflects this conclusion.

The deletion of the reference to a commentary is recommended because there is no commentary even proposed for the Michigan Standards.

4.12 Suspension is generally appropriate when a lawyer fails to hold property in trust, but does not act with the knowledge required under 4.11, or commingles personal property with property that should have been held in trust.

4.13 Reprimand is generally appropriate when a lawyer, in an isolated instance, negligently fails to preserve property held in trust.

4.2 Failure to Preserve the Client's Confidences: The following sanctions are generally appropriate in cases involving improper revelation of information in violation of MRPC 1.6 and 1.9(c):

4.21 Disbarment/Revocation is generally appropriate when a lawyer, in a scheme to benefit the lawyer or another, knowingly reveals information protected under MRPC 1.6 or 1.9(c).

4.22 Suspension is generally appropriate when a lawyer knowingly reveals information protected under MRPC 1.6 or 1.9(c), where the revelation is not part of a scheme to benefit the lawyer or another.

4.23 Reprimand is generally appropriate when a lawyer fails to use reasonable care to prevent employees, associates, and others whose services are utilized by the lawyer from disclosing or using the confidences or secrets of a client.

4.3 Failure to Avoid Conflicts of Interest: The following sanctions are generally appropriate in cases involving conflicts of interest in violation of MRPC 1.7, 1.8, 1.9(a) or (b), 1.10, 1.11, 1.12, 1.13, 5.4(c), or 6.3.

4.31 Disbarment/Revocation is generally appropriate when a lawyer, without the informed consent of the client(s):

- (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's in order to obtain a significant benefit or advantage for the lawyer or another; or
- (b) simultaneously represents clients that the lawyer knows have adverse interests in order to obtain a significant benefit or advantage for the lawyer or another; or
- (c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client in order to obtain a significant benefit or advantage for the lawyer or another; or
- (d) engages in a transaction described in MRPC 1.8(a) with a client wherein the lawyer deceives the client into believing that the transaction and the terms on which the lawyer acquires the interest are fair and reasonable to the client, when the lawyer knows that the transaction and terms are unfair and unreasonable.

4.32 Suspension is generally appropriate when:

- (a) a lawyer knows of a conflict of interest and ~~fails to~~ **does not** seek ~~to obtain~~ consent from the present or former client after consultation; or
- (b) a lawyer knowingly violates MRPC 1.8(c)-(j).

4.33 Reprimand is generally appropriate when a lawyer engages in a conflict of interest in violation of MRPC 1.7, 1.8, or 1.9(a) and (b), but does not knowingly violate the rule(s).

ALTERNATIVE A TO PROPOSED STANDARDS 4.4 AND 4.5

~~4.4 — Lack of Diligence~~

~~— The following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:~~

~~— **4.41** Disbarment is generally appropriate when:~~

- ~~(a) — a lawyer abandons the practice of law and causes serious or potentially serious injury to a client; or~~
- ~~(b) — a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or~~
- ~~(c) — a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.~~

~~— **4.42** Suspension is generally appropriate when:~~

- ~~(c) — a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or~~
- ~~(d) — a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.~~

~~— **4.43** Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.~~

~~4.5 — Lack of Competence~~

~~— The following sanctions are generally appropriate in cases involving failure to provide competent representation to a client:~~

~~— **4.51** Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most~~

~~fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.~~

~~4.52~~ Suspension is generally appropriate when a lawyer knowingly fails to provide competent representation, and causes injury or potential injury to a client.

~~4.53~~ Reprimand is generally appropriate when a lawyer:

(a) ~~demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or~~

(b) ~~negligently fails to provide competent representation and causes injury or potential injury to a client.~~

~~[Note that Alternative A, above, is the ADB's original proposal concerning lawyer incompetence, with changes agreed upon by the Court indicated by strikeovers (that language will be deleted if the Court decides to enter an amended order).]~~

ALTERNATIVE B TO PROPOSED STANDARDS 4.4 AND 4.5

4.4 Lack of Competence, Lack of Diligence, and Neglect: The following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client in violation of MRPC 1.1(a)-(c), 1.2(a) or (b), 1.3, or 1.4:

4.41 ~~Disbarment~~Revocation is generally appropriate when:

~~(a)~~ ~~a lawyer abandons the practice of law; or~~

~~(b)~~ (a) a lawyer knowingly fails to perform services for a client with the purpose of causing significant prejudice to the client's interest; or

~~(c)~~ (b) a lawyer engages in a significant pattern of neglect with respect to client matters.

4.42 Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client, but does not do so with the purpose of causing significant prejudice to the client's interest in a reasonably diligent and prompt manner; or

(b) a lawyer engages in a pattern of neglect; or

(c) a lawyer handles a matter that the lawyer knows or should know that the lawyer is not competent to handle.

4.43 Reprimand is generally appropriate when a lawyer ~~fails to act in a reasonable and diligent manner is negligent and does not act with reasonable diligence~~ in representing a client or handles a matter without preparation adequate under the circumstances.

4.5 Charging Illegal or Clearly Excessive Fees: The following sanctions are generally appropriate in cases involving the charging of an illegal or clearly excessive fee in violation of MRPC 1.5:

4.51 ~~Disbarment~~Revocation is not generally appropriate when a lawyer charges or collects a clearly excessive fee absent the presence of significant factors in aggravation.

4.52 Suspension is generally appropriate when a lawyer knowingly charges or collects a clearly excessive fee.

4.53 Reprimand is generally appropriate when a lawyer ~~negligently~~ charges or collects a clearly excessive fee, but does not do so with the knowledge required under 4.52.

4.6 Lack of Candor: The following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client in violation of MCR 9.104(A)(2) or (3) or MRPC 8.4(b).

4.61 ~~Disbarment~~Revocation is generally appropriate when a lawyer deceives a client to obtain a significant benefit or advantage for the lawyer or another.

4.62 Suspension is generally appropriate when a lawyer deceives a client, and the deception reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law, but is not done to obtain a significant benefit or advantage for the lawyer or another.

~~**ALTERNATIVE A TO PROPOSED STANDARD 4.63**~~

~~**4.63** Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information.~~

~~**ALTERNATIVE B TO PROPOSED STANDARD 4.63**~~

4.63 Reprimand is generally *not* appropriate when a lawyer engages in fraud, deceit or misrepresentation toward a client.

5.0 Violations of Duties Owed to the Public

5.1 Failure to Maintain Personal Integrity: The following sanctions are generally appropriate in cases involving conduct in violation of MCR 9.104(A)(5) or MRPC 3.5(c), 4.1, 6.5(a), or 8.4(b).

5.11 ~~Disbarment~~Revocation is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct, a necessary element of which includes: intentional interference with the administration of justice, false swearing, intentional misrepresentation, fraud, extortion, misappropriation, or theft; the sale, distribution or importation of controlled substances; the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (b) a lawyer engages in any other conduct involving dishonesty, fraud, deceit, or misrepresentation that is a seriously adverse reflection on the lawyer's fitness to practice; or
- (c) a lawyer knowingly mistreats a person involved in the legal process because of the person's race, gender, or other protected personal characteristic in order to gain ~~an~~ a significant benefit or -advantage in ~~the litigation~~ for the lawyer or another; or
- (d) a lawyer knowingly engages in conduct that is discourteous and disrespectful toward a tribunal in order to gain ~~an~~ a significant benefit or advantage ~~in the litigation~~ for the lawyer or another.

5.12 Suspension is generally appropriate when:

- (a) a lawyer engages in criminal conduct that does not contain the elements listed in Standard 5.11 but that nevertheless adversely reflects on the lawyer's fitness to practice; or
- (b) a lawyer engages in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness to practice; or
- (c) a lawyer knowingly mistreats a person involved in the legal process because of the person's race, gender, or other protected personal characteristic without the purpose of gaining a ~~n~~ a significant benefit or advantage ~~in the litigation~~ for the lawyer or another; or
- (d) a lawyer knowingly engages in conduct that is discourteous and disrespectful toward a tribunal without the purpose of gaining a ~~n~~ a significant benefit or advantage ~~in the litigation~~ for the lawyer or another.

ALTERNATIVE A TO PROPOSED STANDARD 5.13

5.13 Reprimand is generally appropriate when a lawyer engages in criminal conduct that does not ~~either~~ contain the elements listed in Standard 5.11 or reflect adversely upon the lawyer's fitness to practice.

~~———— **ALTERNATIVE B TO PROPOSED STANDARD 5.13** ————~~

~~———— **5.13** Reprimand is generally appropriate when:~~

- ~~———— (a) ———— a lawyer engages in criminal conduct that does not contain the elements listed in Standard 5.11 and that reflects adversely on the lawyer's fitness to practice; or~~
- ~~———— (b) ———— a lawyer engages in any conduct that involves dishonesty, fraud, deceit, or knowing misrepresentation and that adversely reflects on the lawyer's fitness to practice law to a slight degree; or~~
- ~~———— (c) ———— a lawyer engages in an isolated instance of simple negligence in dealing with the property of another entrusted to the lawyer and causes little or no injury or potential injury.~~

5.2 Failure to Maintain the Public Trust: The following sanctions are generally appropriate in cases involving public officials who engage in conduct that is prejudicial to the administration of justice or who state or imply an ability to influence improperly a government agency or official in violation of MCR 9.104(A)(1), MRPC 3.8, 6.4, or 8.4(c) or (d).

~~————~~ **5.21** ~~Disbarment~~Revocation is generally appropriate when a lawyer in an official or governmental position knowingly misuses the position with the purpose of causing prejudice to the administration of justice or either states or implies that the lawyer may improperly influence another in an official or governmental position to obtain a benefit or advantage for the lawyer or another.

5.22 Suspension is generally appropriate when

- ~~————~~ (a) ———— a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules, and that failure causes ~~resulting in~~ prejudice to the administration of justice; or,
- ~~————~~ (b) ———— a prosecutor or assistant prosecutor violated the duties set forth in MRPC 3.8(a)-(e) and the violation results in prejudice to the administration of justice.⁹

5.23 Reprimand is generally appropriate when:

- (a) a lawyer in an official or governmental position ~~negligently~~ fails to follow proper procedures or rules, but where the lawyer does not have the knowledge required by 5.22, and that failure causes ~~(with the exception of~~

⁹ The addition to 5.22(b) merely clarifies the existing language. In Standard 5.22(b) and 5.23(b) the Standards, like the MRPC, recognize the prosecutor's special responsibility as a minister of justice.

~~the duties set forth in MRPC 6.4, which cannot be violated by simple negligence), resulting in~~ prejudice to the administration of justice; or

- (b) a prosecutor or assistant prosecutor violates the duties set forth in MRPC 3.8(a)-(e) and the violation even though the violation does not cause result ~~in~~ prejudice to the administration of justice.

6.0 Violations of Duties Owed to the Legal System

6.1 False Statements, Fraud, and Misrepresentation to a Tribunal: The following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a tribunal in violation of MRPC 3.3:

6.11 ~~Disbarment~~Revocation is generally appropriate when a lawyer knowingly makes a false statement, submits a false document, or improperly fails to disclose a material fact or adverse controlling authority, known to the lawyer and not disclosed by opposing counsel, to obtain a significant benefit or advantage for the lawyer or another.

6.12 Suspension is generally appropriate when:

- (a) a lawyer engages in the conduct described in Standard 6.11 but does not do so to obtain a significant benefit or advantage for the lawyer or another; or
- (b) a lawyer comes to know of the falsity of material evidence the lawyer has offered to a tribunal but fails to take reasonable remedial measures.

~~ALTERNATIVE A TO PROPOSED STANDARD 6.13~~

~~**6.13** Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents submitted to a tribunal are false or in taking remedial action when material information is being withheld.~~

~~ALTERNATIVE B TO PROPOSED STANDARD 6.13~~

6.13 Reprimand is generally *not* appropriate when a lawyer engages in false statements, fraud, and misrepresentation to a tribunal.

6.2 Abuse of the Legal Process: The following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists, in violation of MCR 9.104(A)(1), MRPC 3.1, 3.2, 3.4, 3.6, 4.4, or 8.4(c).

6.21 ~~Disbarment~~Revocation is generally appropriate when a lawyer knowingly violates a court order or rule to obtain a significant benefit or advantage for the lawyer or another, or violates MRPC 3.4(a) or (b).

6.22 Suspension is generally appropriate when:

- (a) a lawyer knowingly violates a court order or rule without the intent to obtain a significant benefit or advantage for the lawyer or another but where the violation causes ~~resulting in~~ prejudice to the administration of justice; or
- (b) a lawyer knowingly brings or defends a matter without a basis that is not frivolous; or
- (c) a lawyer knowingly fails to expedite litigation consistent with the interests of the client.

6.23 Reprimand is generally appropriate when:

- (a) a lawyer violates MRPC 3.4(d)-(f) or 3.6; or
- (b) a lawyer negligently brings or defends a matter without a basis that is not frivolous; or
- (c) a lawyer negligently fails to expedite litigation consistent with the interests of the client.

6.3 Improper Communications with Individuals In the Legal System: The following sanctions are generally appropriate in cases involving attempts to influence a judge, juror, prospective juror, or other official by means prohibited by law or in violation of MRPC 3.5(a) or (b), 4.2, or 4.3:

6.31 ~~Disbarment~~Revocation is generally appropriate when a lawyer:

- (a) ~~intentionally~~ tampers with a witness in an attempt to influence ~~interfere with~~ the outcome of the legal proceeding; or
- (b) makes an ex parte communication with a judge or juror in an attempt to influence ~~affect~~ the outcome of the proceeding; or
- (c) improperly communicates with someone in the legal system other than a witness, judge, or juror in an attempt to influence ~~influence or affect~~ the outcome of the proceeding.

6.32 Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, but the communication is not done with the purpose of influencing the outcome of the proceeding.

6.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system.

7.0 Violations of Other Duties Owed as a Professional: The following sanctions are generally appropriate in cases involving conduct in violation of MRPC 1.14, 1.16, 2.1, 2.3, 5.1 - 5.6, 6.2, 7.1 - 7.5, 8.1, 8.3, or 8.4(e).

7.1 ~~Disbarment~~Revocation is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional to obtain a significant benefit or advantage for the lawyer or another.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional but does not do so in order to obtain a significant benefit or advantage for the lawyer or another.

7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional.

8.0 Practice of Law in Violation of an Order of Discipline: The following sanctions are generally appropriate in cases involving the practice of law in violation of an order of discipline.

8.1 ~~Disbarment~~Revocation is generally appropriate when a lawyer intentionally practices law in violation of the terms of a disciplinary order.

8.2 Generally, the same discipline imposed by the original disciplinary order should be consecutively imposed when a lawyer practices law in violation of the terms of a disciplinary order, but does not engage in such conduct knowingly.

ALTERNATIVE A TO PROPOSED STANDARD 8.3

8.3 Reprimand is generally *not* appropriate when a lawyer practices law in violation of the terms of a disciplinary order.

ALTERNATIVE B TO PROPOSED STANDARD 8.3

~~**8.3** Reprimand is generally appropriate when a lawyer negligently practices law in violation of the terms of a disciplinary order.~~

E. AGGRAVATION AND MITIGATION

9.1 Generally: After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.¹⁰

¹⁰ The factors proposed for retention are the significant factors that by their presence or absence will likely affect an adjustment in the level of sanction recommended by the Standards.

9.2 Aggravation

9.21 Definition: Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.

9.22 Factors that may be considered in aggravation include:

- (a) degree of harm to a client, opposing party, the bar, bench, or public;
- (b) prior disciplinary offenses;
- ~~(c) dishonest or selfish motive;~~
- ~~(d) a pattern of misconduct;~~
- (e) multiple offenses;
- ~~(f)~~ obstruction of the disciplinary proceeding by knowingly failing to comply with rules or orders of the disciplinary agency; and,
- ~~(g) submission of false evidence or statements, or other deceptive practices, during the disciplinary process;~~
- ~~(h) refusal to acknowledge wrongful nature of conduct;~~
- ~~(i)~~ vulnerability of victim;
- ~~(j) substantial experience in the practice of law;~~
- ~~(k) indifference to making restitution; and~~
- ~~(l) illegal conduct, including that involving the use of controlled substances.~~

9.3 Mitigation

9.31 Definition: Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

9.32 Factors that may be considered in mitigation include:

- (a) absence of any degree of harm to a client, opposing party, the bar, bench, or public;
- ~~(b) absence of a prior disciplinary record;~~
- ~~(c) absence of a dishonest or selfish motive;~~
- ~~(d)~~ serious personal or emotional problems that contributed to the misconduct;

(~~ec~~) timely good-faith effort to make restitution or to rectify consequences of misconduct;

~~(f) full and free disclosure to disciplinary board or cooperative attitude toward the proceedings;~~

~~(g) inexperience in the practice of law;~~

~~(h) character or reputation;~~

(~~d~~i) physical disability that contributed to the misconduct;

(~~e~~i) mental disability or chemical dependency, including alcoholism or drug abuse, when:

(2) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;

(3) the chemical dependency or mental disability contributed to the misconduct;

(4) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and

(5) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;

(~~k~~f) delay in disciplinary proceedings;

~~(l) imposition of other penalties or sanctions; and~~

~~(m) remorse.~~

9.4 Factors that are Neither Aggravating nor Mitigating: The following factors should not be considered as either aggravating or mitigating:

(a) forced or compelled restitution;

(b) agreeing to the client's demand for certain improper behavior or result;

(c) withdrawal of complaint against the lawyer;

(d) resignation before completion of disciplinary proceedings;

(e) complainant's recommendation as to sanction; and

(f) failure of injured client to complain.

Competence/Neglect Rule 1.1, 1.1(a)(b) and (c)	Standard 4.4
Scope of Representation Rule 1.2(a), (b) Rule 1.2(c)	Standard 4.4 Standards 5.1, 6.1
Diligence Rule 1.3	Standard 4.4
Communication Rule 1.4	Standard 4.4
Fees Rule 1.5	Standards 4.5
Confidentiality of Information Rule 1.6	Standard 4.2
Conflict of Interest Rule 1.7	Standard 4.3
Prohibited Transactions Rule 1.8	Standard 4.3
Former Client Rule 1.9(a) and (b) Rule 1.9(c)	Standard 4.3 Standard 4.2
Imputed Disqualification Rule 1.10	Standard 4.3
Successive Government and Private Employment Rule 1.11	Standard 4.3
Former Judge or Arbitrator Rule 1.12	Standard 4.3
Organization as Client Rule 1.13	Standard 4.3
Disabled Client Rule 1.14	Standard 7.0
Safekeeping Property Rule 1.15(a), (b), (c)	Standard 4.1
Declining or Terminating Representation Rule 1.16	Standard 7.0
Advisor Rule 2.1	Standard 7.0
Intermediary Rule 2.2	Standard 4.3

Evaluation for Use by Third Persons Rule 2.3	Standard 7.0
Meritorious Claims and Contentions Rule 3.1	Standard 6.2
Expediting Litigation Rule 3.2	Standard 6.2
Candor Toward the Tribunal Rule 3.3	Standard 6.1
Fairness to Opposing Party and Counsel Rule 3.4	Standard 6.2
Impartiality and Decorum Rule 3.5(a) and (b) Rule 3.5(c)	Standard 6.3 Standard 5.1
Trial Publicity Rule 3.6	Standard 6.2
Lawyer as Witness Rule 3.7	Standard 4.3
Special Responsibilities of a Prosecutor Rule 3.8	Standard 5.2
Advocate in Nonadjudicative Proceedings Rule 3.9	Standard 6.2
Truthfulness to Others Rule 4.1	Standard 5.1
Communication with Represented Persons Rule 4.2	Standard 6.3
Dealing with Unrepresented Persons Rule 4.3	Standard 6.3
Respect for Rights of Third Persons Rule 4.4	Standard 6.2
Responsibilities of a Partner or Supervisory Lawyer Rule 5.1	Standard 7.0
Responsibilities of a Subordinate Lawyer Rule 5.2	Standard 7.0
Responsibilities Regarding Non-lawyer Assistants Rule 5.3	Standard 7.0

Professional Independence of Lawyer Rule 5.4(a), (b), and (d) Rule 5.4(c)	Standard 7.0 Standard 4.3
Unauthorized Practice of Law Rule 5.5	Standard 7.0
Restrictions on Right to Practice Rule 5.6	Standard 7.0
Pro Bono Public Service Rule 6.1	No Applicable Standard
Accepting Appointments Rule 6.2	Standard 7.0
Membership in Legal Services Organization Rule 6.3	Standard 4.3
Law Reform Activities Affecting Client Interests Rule 6.4	Standard 5.2
Professional Conduct Rule 6.5	Standard 5.1
Communication Concerning Lawyer's Services Rule 7.1	Standard 7.0
Advertising Rule 7.2	Standard 7.0
Direct Contact with Prospective Clients Rule 7.3	Standard 7.0
Communication of Fields of Practice Rule 7.4	Standard 7.0
Firm Names and Letterheads Rule 7.5	Standard 7.0
Bar Admission and Disciplinary Matters Rule 8.1	Standards 5.1, 7.0
Judges and Legal Officials Rule 8.2	Standard 5.1
Reporting Professional Misconduct Rule 8.3	Standard 7.0
Misconduct Rule 8.4(a) Rule 8.4(b); MCR 9.104(A)(2)(3)&(5) Rule 8.4(c); MCR 9.104(A)(1) Rule 8.4(d) Rule 8.4(e)	Standards 4.0, 5.0, 6.0, 7.0 Standards 4.6, 5.1 Standards 5.2, 6.2 Standard 5.2 Standard 7.0

Jurisdiction Rule 8.5	None
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